

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA FOR THE
USE AND BENEFIT OF WELLS
CARGO, INC.,

Case No. 2:18-CV-1182 JCM (EJY)

ORDER

Plaintiff(s),

V.

ALPHA ENERGY AND ELECTRIC, INC., et al.,

Defendant(s).

Presently before the court is third-party plaintiff Alpha Energy and Electric, Inc.’s (“Alpha”) motion to clarify this court’s order in limine. (ECF No. 190). Third-party defendant Northcon, Inc. (“Northcon”), third-party defendant Southwestern Construction, Inc. (“Southwestern”), and defendant American Contractor Indemnity Company (“ACIC”) each filed responses (ECF Nos. 191; 193; 194), to which Alpha replied (ECF No. 197).

I. Background

On February 3, 2022, this court granted Southwestern’s motion in limine to impose discovery sanctions on Alpha to prevent it from using any undisclosed and improperly disclosed evidence to support its alleged damages at trial. (ECF No. 183). The facts of this matter are discussed at length in that order, so the court will not repeat them here. (*See id.*).

Alpha now moves for clarification as to whether that order precludes it from offering “evidence of the Wells Cargo judgment of \$134,814.76 in support of [its] indemnity claim.” (ECF No. 190 at 5). The “Wells Cargo judgment” Alpha refers to is this court’s order granting summary judgment in favor of Wells Cargo filed on July 22, 2019. (ECF No. 89).

1 Alpha argues that it properly disclosed the damages for its indemnity claim when it
 2 pleaded that it “is entitled to indemnification from [Southwestern and Northcon] in the full
 3 amount of any judgment against [Alpha] in favor of [] Wells Cargo” (ECF No. 6 ¶ 49), and later
 4 disclosed the bond claim amount—\$134,814.76—that Wells Cargo sought against Alpha. (ECF
 5 No. 17-1 at 10). According to Alpha, this constitutes a proper disclosure of its indemnity
 6 damages. Yet, Alpha admits that it did not supplement its disclosures of those damages when
 7 Wells Cargo settled its claims against Alpha in 2019.

8 Alpha argues that it did not need to formally supplement its initial disclosures with a
 9 calculation of damages because “the theory of liability was clear from the start and the Wells
 10 Cargo judgment amount of \$134,814.76 was already known by both parties.” (ECF No. 190 at
 11 4). This argument is nearly identical to Alpha’s previous argument that it had no duty to disclose
 12 its indemnity damages because those damages were “naturally and logically dependent on the
 13 amount of ACIC’s liability on the bond claim.” (ECF No. 174 at 5). The court again rejects this
 14 plainly false argument.

15 When the court granted summary judgment in favor of Wells Cargo, it instructed Wells
 16 Cargo to “prepare and submit to the court a proposed judgment” consistent with the summary
 17 judgment order. (ECF No. 89). However, Wells Cargo settled its claims against Alpha and
 18 voluntarily dismissed its complaint before any judgment was entered. (ECF Nos. 91; 94).

19 After the settlement, Alpha did not supplement its disclosures to allege \$134,814.76 in
 20 damages. Instead, it sought the total amount of the settlement—\$149,955.64—without
 21 disclosing its source for those damages.¹ Yet, as neither Southwestern nor Northcon were parties
 22 to that settlement, the “judgment” amount was not “already known to the parties” as Alpha
 23 contends. (ECF No. 190 at 4).

24 Therefore, contrary to Alpha’s contention, the court’s order granting summary judgment
 25 does not provide the “full amount of any judgment against [Alpha] in favor of [] Wells Cargo”

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 28 ¹ Though Alpha now tacitly attempts to save the bulk of its alleged indemnity damages
 by eliminating the interest and costs, Alpha fails to show that it properly disclosed even this
 lesser amount.

1 that Alpha originally sought in its pleadings and cannot serve as evidence of Alpha's alleged
2 indemnity damages.

3 As the court previously held, "Alpha is precluded from using any undisclosed and
4 improperly disclosed evidence at trial—including the settlement agreement." (ECF No. 183 at
5 11). To clarify, Alpha is also precluded from supporting its alleged damages with a judgment
6 that does not exist.

7 DATED April 18, 2022.

8 
9 UNITED STATES DISTRICT JUDGE

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